

STATE OF CALIFORNIA

CALIFORNIA ENERGY RESOURCES AND DEVELOPMENT COMMISSION

In the Matter of:) Docket No. 01-AFC-19
)
Sacramento Municipal Utility District's)
Application for Certification of the)
Cosumnes Power Plant)
_____)

**OBJECTION TO CALIFORNIA ENERGY
COMMISSION STAFF DATA REQUESTS 229, 230, 236-238 AND 240**

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DOWNEY, BRAND, SEYMOUR & ROHWER, LLP
JANE E. LUCKHARDT, ESQ. (Bar No. 141919)
555 Capitol Mall, Tenth Floor
Sacramento, CA 95814-4686
Telephone: (916) 441-0131
Facsimile: (916) 441-4021

SACRAMENTO MUNICIPAL UTILITY DISTRICT
STEVEN COHN, ESQ. (Bar No. 88565)
6201 S Street
Sacramento, CA 95817
Telephone: (916) 732-5847
Facsimile: (916) 732-6581

Attorneys for Applicant
Sacramento Municipal Utility District

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ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	Docket No.: 01-AFC-19
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_____)	AND 240

On April 5, 2002, Sacramento Municipal Utility District (“SMUD”) received California Energy Commission (“Commission”) Staff’s data requests 184 through 253. SMUD and their consultants have conducted an initial review of these requests and will file responses as soon as possible including today and within 30 days for the majority of responses¹, as specified by Title 20 California Code of Regulations (“Siting Regulations”²) Section 1716 (f). Unfortunately, SMUD is must preserve its right to object to Data Requests 229, 230, 236-238 and 240 (“Disputed Requests”). As always, SMUD is willing to work with Commission Staff to provide information that is reasonably available to SMUD that is relevant to the Application for Certification for the Cosumnes Power Plant (“Application”) or reasonably necessary to make a decision on the Application (Siting Regulations 1761[b].). Unfortunately, the requirement to file objections within ten days of receipt of the Data Requests does not allow SMUD to discuss concerns or obtain clarifications of questions prior to filing a formal objection. SMUD would like to discuss the Disputed Requests with Commission Staff at their earliest convenience.

¹ If SMUD needs to develop information to respond to Data Requests 245-250, SMUD may need additional time to respond to these requests.

² Sections 1001 et. seq.

SMUD's objections fall into three parts. The first part contains Data Requests 229 and 230 relating to environmental site assessments. The second part includes Data Requests 236-238 regarding receiving water flows and conditions. And, Data Request 240 regarding conditions placed on the Cosumnes Power Project constitutes part three. SMUD's objection to these requests is summarized below and discussed further in the following materials by parts.

1. The information requested in 229 and 230 is not reasonably necessary to make a decision on this Application.
2. The information requested in 236-238 may be excessively burdensome, not reasonably available to SMUD and not reasonably necessary.
3. The information requested in 240 is based upon an incorrect premise that the Central Valley Regional Water Quality Control Board ("Regional Board") has determined best practicable treatment for the Cosumnes Power Plant ("CPP")

The Information Provided in the Application and Phase I Assessment Provides Sufficient Information to Make a Decision on this Application

Data Request 229 asks for a "complete Phase I ESA [environmental site assessment] for the 26-mile gas pipeline corridor and natural gas compressor stations according to ASTM 2000 guidelines." On January 11, 2002 SMUD objected to a very similar request, Data Request 183. Data Request 183 asked SMUD to "provide a complete Phase I ESA for the 30-acre site, laydown areas, and 26-mile gas pipeline corridor according to ASTM 2000 guidelines." At Commission Staff's January 24, 2002 workshop SMUD and Commission Staff agreed to a compromise solution to Data Request 183. SMUD would provide a Phase I ESA for the 30-acre site and laydown area but would not be required to provide a Phase I ESA for the 26-mile pipeline route. This solution recognized the excessive burden of evaluating all of the different parcels touched by the 26-mile pipeline route. Contrary to the agreement reached on January 24, Commission Staff has requested the same information again. And again, SMUD objects to 229 due to the excessive burden on the SMUD to providing a Phase I ESA for the 26-mile pipeline

route. The reasoning provided for the objection to Data Request 183 applies to Data Request 229 and therefore, is repeated below.

The requested information is unnecessary to make a decision on the Application due to the analysis completed and included in the Application for Certification for the Cosumnes Power Plant (“Application”). A database search of the linear corridors was completed (Application 8.13-4 to 8.13-5 and Appendix 8.13). A discussion of the contaminated soils expected to be encountered along the linear facilities is also included (see Application 8.13-5). Due to SMUD’s planned construction of linears along railroad and roadway corridors, SMUD included a construction plan in the Application (Section 8.13.3.5) to address contaminated soils encountered during construction of the linear facilities.

The investigations already completed by SMUD and common knowledge of potential contamination along railroad right-of-ways provide a picture of the potential contaminants that could be encountered during project construction. The construction plan to address contaminants encountered during construction provides a method to protect the public and maintain worker safety. Thus, the formal completion of a Phase I analysis for the 26 miles of linear corridor would not provide additional information that is reasonably necessary to reach a decision on the application. Performing a Phase I, given the information in the Application, would simply result in an unnecessary project expense to be borne by SMUD ratepayers.

SMUD also objects to Data Request 230. Data Request 230 asks for a “Sampling and Analysis Plan for the site and laydown areas.” The Phase I ESA provided to the Commission Staff in accordance with SMUD and Commission Staff’s agreed upon resolution to Data Request 183, did not require soil sampling for the site or laydown areas. The type of sampling requested by Commission Staff is typical of a Phase II site assessment. Phase II assessments follow

findings in Phase I site assessments that warrant additional evaluation. No such findings were included in the Phase I; therefore, no soil sampling or analysis is required. Based upon the findings included in the Phase I, the additional sampling requested is not reasonably necessary to make a decision on this Application.

The Commission Staff Requests Information Regarding Receiving Waters that is Not Available to SMUD and Exceeds the Information Expected to be Requested by the Agency Responsible for Protection of Receiving Water

SMUD hopes to resolve concerns about requests for additional information included in Data Requests 236-238 in discussions of available information with Commission Staff. SMUD has provided all of the available information known to SMUD to Commission Staff. If Commission Staff is aware of sources for or the existence of additional information, SMUD would like to know about those sources so that SMUD could provide additional information to Commission Staff. Because of the ten-day requirement to notify Commission Staff of objections and the fact that SMUD is not aware of any other reasonably available information, SMUD must file this objection today.

Data Requests 236-238 relate to the analysis of impacts on receiving water of SMUD's proposed discharge from the cooling towers. To the best of SMUD's knowledge, SMUD has provided all available information to respond to 236-238. The Central Valley Regional Water Quality Control Board ("Regional Board") has responsibility for the quality of water in the streams potentially impacted by CPP and is responsible for conditioning the National Pollutant Discharge Elimination System ("NPDES") permit needed by CPP to discharge to Clay Creek. SMUD is currently working with the Regional Board to complete its application to formally begin the Regional Board's review of SMUD's application. SMUD's experience with the Regional Board in prior applications indicates that the information requested by Commission

Staff exceeds the information typically requested by the Regional Board for analysis of project impacts and is therefore, unnecessary to determine impacts from CPP's proposed discharge. Thus, 236-238 request information that is not reasonably available to the SMUD, is not reasonably necessary to make a decision on this Application, and is not relevant to this Application.

Data Request 240 is Based on a False Premise

Data Request 240 states that the Regional Board has made a determination of best practicable treatment for CPP. The Regional Board has not even accepted CPP's application for an NPDES permit as complete. Therefore, the Regional Board has not issued or made any determinations regarding best practicable treatment for CPP. Furthermore, SMUD has obtained NPDES permits for other projects wherein the Regional Board has not made this determination. Based upon this experience, SMUD has no reason to believe that the Regional Board will make the determination relied upon by Commission Staff. Since Data Request 240 relies upon a position that the Regional Board has not yet taken and may not take, SMUD objects to providing a response to this request as not reasonably available to SMUD or reasonably necessary to make a decision on the Application.

Conclusion

SMUD would also like to inform the Commission Staff that if the information requested in Data Requests 245-250 needs to be developed by SMUD, SMUD will require additional time to respond. SMUD will have a better idea of the length of time required to respond once SMUD determines whether the information requested is available.

For the above stated reasons SMUD objects to the Disputed Requests. SMUD is willing to work with Commission Staff to resolve these issues but needs to be mindful of incurring

unnecessary expenses to obtain information that is not reasonably available to SMUD nor reasonably necessary to make a decision on the Application.

Respectfully,

Jane E. Luckhardt
Downey, Brand, Seymour & Rohwer, LLP

Steven M. Cohn, Senior Attorney
Sacramento Municipal Utility District